

6-15-2010

# State v. Two Jinn, Inc. Appellant's Reply Brief Dckt. 37251

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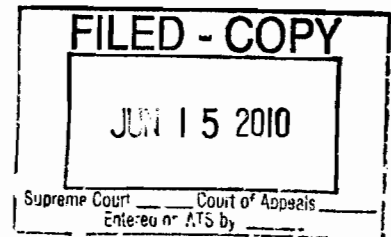
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, )  
)  
Plaintiff-Respondent, )  
)  
v. )  
)  
BRETT ROBERT BARDSLEY, )  
Defendant; )  
)  
and )  
)  
TWO JINN, INC., )  
)  
Real Party In Interest-Appellant. )  
\_\_\_\_\_ )

Docket No. 37251-2010

Ada County District Court  
Case No. CR-FE-2008-21530



REPLY BRIEF OF APPELLANT

Appeal from the District Court of the Fourth  
Judicial District of the State of Idaho  
In and For the County of Ada

HONORABLE RICHARD D. GREENWOOD  
Presiding Judge

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## **II. ARGUMENT IN REPLY**

### **A. The Surety Did Not Permit Bardsley to Leave This Jurisdiction.**

The State appears to be arguing the court did not abuse its discretion because Two Jinn permitted Bardsley to leave Idaho. No evidence was presented to the district court that the surety permitted Bardsley to leave or even that he fled this jurisdiction. He was not arrested in a foreign jurisdiction.

The State's argument ignores the fact that Bardsley was in the Ada County Jail on June 4, 2009 pursuant to his arrest by the United States Marshall Service (hereinafter "USMS"). *See* R. 66. At page 2 of the Respondent's Brief on Appeal, the State indicates Bardsley was taken into federal custody in Idaho on June 9, 2009 relying on R. 79. Paragraph 5 of R. 79 indicates Bardsley was arrest by the USMS while housed in the Ada County Jail, Boise, Idaho.

Even though Bardsley was in the Ada County Jail, the bench warrant for his failure to appear was not served. Bardsley was removed from the state's jurisdiction by the federal government. After his removal from Idaho by the federal government, the surety ultimately located Bardsley in California and notified the State of his location. The Federal Judge released Bardsley from custody in his federal case pursuant to an order dated September 3, 2009. R. 85. Bardsley posted a bond with the San Diego Sheriff's Department on September 4, 2009 and was scheduled to appear in court for arraignment on September 14, 2009. R. 86. Bardsley posted bond prior to Idaho initiating extradition proceedings.

The State did not seek the extradition of Bardsley until after receiving the September 16, 2009 letter from the San Diego County District Attorney's Office. *See* R. 79. This was at least 36 days after the State was faxed the Notice of Location. R. 41-42. It was also only four (4) days before the 180<sup>th</sup> day after the order was entered forfeiting the bond. Bardsley did return to

Idaho, where authorized representatives of Two Jinn located, arrested and surrendered him to the Ada County Jail at which time the extradition proceedings were discontinued.

Based upon the letter from the San Diego County District Attorney's Office, the State was being advised as to what needed to be done to pursue extradition. This does not mean that extradition had been actively pursued before a new bond was posted. Therefore, the fact that a new bond had been posted is not an issue as the State tries to argue.

**B. The Court Failed to Apply the Correct Legal Standard.**

The State's argument focuses on the reasons of why this bond should not be exonerated.

The court phrased the issue as follows at R. 90:

. . . In consideration of the language of the statute, the issue focuses on whether the defendant, or the surety, returned the defendant to Ada County or present sufficient reason for excusing the March 2009 absence within 180 days of the forfeiture. The Court finds that neither of these two events occurred. . . .

The Motion filed to set aside forfeiture was not seeking an exoneration pursuant to I.C. § 19-2927. The Motion was filed seeking an exoneration, in full or in part, pursuant to I.C. § 19-2917, the law in effect at the time the motion was filed. The relevant provision prior to July 1, 2009 was I.C.R. 46(e)(4). Either provision gives the court the discretion to exonerate a bond in full or in part if it appears that justice does not require the enforcement of the forfeiture. The focus is not on what did not happen. The focus of the analysis is on what did occur to further the goal of having a defendant answer to his charges. The primary purpose of bail is not punitive but is intended to ensure a defendant's presence in court. *Quick Release Bail Bonds* 144 Idaho at 653, 167 P.3d at 790 (Ct. App. 2007). The State has no entitlement to a windfall where the amount of the bail far exceeds the State's costs. *Id.*

Paramount amount considerations for determining whether justice requires enforcement of a forfeiture is the necessity of providing an incentive to the surety to take active and reasonable steps to recapture a fugitive defendant. *State v. de la Hoya*, 819 A.2d 467, 470 (N.J. 2003). The State's reasoning discourages bail agents from locating absconders. The results of Two Jinn's efforts resulted in the Defendant being back before the court to answer to his charges.

The State's actions in not serving the bench warrant, a mitigating factor, and not promptly seeking the extradition of Bardsley are relevant factors for the court's consideration. *State v. Quick Release Bail Bonds*, 144 Idaho 651, 653, 167 P.3d 788, 790 (Ct. App. 2007).

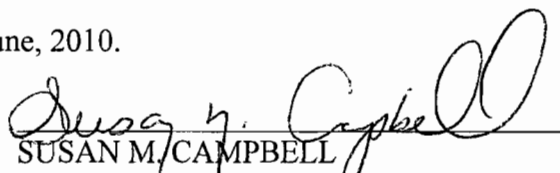
Absconding defendants hide from the persons attempting to return them to custody. The statutory authority to arrest a defendant until a bond is discharged or exonerated furthers the goal of deterring a defendant from future violations. Even though the 180<sup>th</sup> day had passed, Two Jinn continued to work to return Bardsley to court, which is in the interest of justice.

The court failed to apply the correct legal standard or to apply the relevant factors in a manner that furthered the purpose underlying bail and relief from forfeiture. Accordingly, the court failed to reach its decision to refuse to set aside any of the forfeiture through an exercise of reason or consistently with applicable legal standards.

### III. CONCLUSION

For the reasons set forth above and in its opening brief, Two Jinn respectfully asks that this Court vacate the district court's order forfeiting this bond in full and remand this case for entry of an order exonerating this bond in full or in part.

Respectfully submitted this 15<sup>th</sup> day of June, 2010.

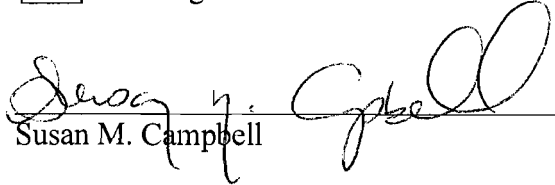
  
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Associate General Counsel, Two Jinn, Inc.  
Attorney for the Appellant

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15<sup>th</sup> day of June, 2010, I caused two true and correct copies of the foregoing to be served by the following method to:

STATE OF IDAHO  
OFFICE OF ATTORNEY GENERAL  
Karin D. Jones  
PO Box 83720  
Boise, ID 83720-0010

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Court House Basket
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail

  
\_\_\_\_\_  
Susan M. Campbell